

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CINDY CURLEY,

Plaintiff,

vs.

No. CIV 98-968 LCS/ACE

THE UNITED STATES OF AMERICA,

Defendant.

AMENDED MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion for Leave to File Amended Complaint, filed on March 19, 1999. The Court, having considered the pleadings, the memoranda submitted by the parties and the applicable law, finds that the Motion is not well-taken and it will be denied.

On April 27, 1998, Plaintiff was injured in an automobile accident with a government vehicle. On August 1, 1997, she filed an administrative claim against the government. That claim was denied on October 7, 1998. On August 11, 1998, she filed this lawsuit under the Federal Tort Claims Act, 28 U.S.C. Sec. 1346 (b). A prerequisite to this Court's exercising jurisdiction over her claims is that those claims must either have been finally resolved at the administrative level, or have been pending at the administrative level for at least six months. *Lurch v. United States*, 719 F.2d 333, 335 (10th Cir. 1983).

Plaintiff seeks leave to amend her complaint in order to add a claim for previously undiagnosed head injuries, and to add a claim by her husband for loss of consortium. On April 7, 1999, Plaintiff and her husband filed administrative claims for these injuries. Since those

administrative claims have neither been finally resolved nor pending for six months, this Court does not have jurisdiction over them.

Under Fed.R.Civ.P. 15, leave to amend a Complaint should be freely given when justice so requires. However, "...the court is not required to engage in futile gestures by allowing amendments ... which would assert claims over which the court does not have jurisdiction." *United States v. Clover Club Potato Chips*, 67 F.R.D. 419, 424 (D.Idaho 1975). That is what would happen here.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Leave to File an Amended Complaint (docket entry #26) is DENIED.

LESLIE C. SMITH
United States Magistrate Judge